
Special Purpose Local Option Sales Tax (SPLOST)

The unpopularity of property taxes and the simplicity and perceived fairness of sales taxes have made the county special purpose local option sales tax (SPLOST) a popular method for financing needed capital projects. The following guide has been developed to assist county officials with their questions about SPLOST and to help ensure that counties do not run afoul of the requirements of the SPLOST law.

The SPLOST law was enacted in 1985 at the request of ACCG. The SPLOST tax was conceived of and was enacted as a county tax for funding capital projects. It is not a municipal tax; nor is it a joint county-municipal tax like the regular Local Option Sales Tax (LOST). As a county tax, the SPLOST can only be initiated by the board of commissioners (O.C.G.A. § 48-8-110 and Op. Atty. Gen. U85-24). Furthermore, since this tax is a county tax, the county must control the money and may only make payments and expenditures authorized by law (Op. Atty. Gen. U89-15).

Although counties, by law, have control over the SPLOST, they are not allowed to use the revenues generated by a SPLOST for whatever purpose they choose. There are several restrictions imposed including the following. First, only capital outlays can be funded, i.e., operations and maintenance expenditures are not authorized. Second, only projects specified in O.C.G.A. § 48-8-111(a)(1)(A) through (H), such as courthouses, jails, roads and bridges can be financed with SPLOST revenues. Projects financed via SPLOST are intended to benefit the county as a whole—either standing alone or in combination with other county capital outlay projects or municipal capital outlay projects.

Questions and Answers:

1. What is the Special Purpose Local Option Sales Tax?

The tax is a special county sales tax of one percent (1%) on items subject to the state sales and use tax within the county plus the sale of off-premise consumption food and beverages and the sale of natural gas to electric generating facilities. The proceeds of the tax must be spent for capital, non-operating outlays by the county government and participating municipal governments in the county.

2. How is the tax levied?

Section 48-8-111 of the Official Code of Georgia Annotated authorizes county governing authorities to call a local referendum on whether or not to impose a SPLOST. The tax is in the amount of one percent (1%) and may run for a period of no longer than five (5) years or until the project costs specified in the referendum have been raised, whichever comes first.

Meet and Confer - Thirty days before the board of commissioners issue the call for a SPLOST referendum, they must notify the mayor or chief elected official in each municipality and set up a meeting to discuss and consider requests from the cities to include municipal projects in the SPLOST referendum. The notice must be mailed at least 10 days prior to the date of the meeting and must contain the date, time, place, and purpose of the meeting (OCGA § 48-8-111 (a)). See Appendix A for a timeline.

Resolution - Once the board of commissioners has put together a list of projects to be funded with SPLOST, a county ordinance or resolution must be adopted calling for imposition of the tax. The ordinance or resolution must include the purpose or purposes of the tax levy, the maximum dollars to be raised and the time period of the levy (stated in calendar years or calendar quarters not exceeding 5 years).

Call for the Referendum - The resolution or ordinance is then sent to the county election superintendent, who issues the call and conducts the SPLOST election. The county electorate must approve the tax in order for it to take effect. All elections including a SPLOST referendum must conform to the Elections Code of Georgia, which specifies when such special elections may be held (O.C.G.A. § 21-2-540). There are four days each year when elections may be held and the dates vary depending on whether the year in which the vote occurs is odd- or even-numbered. See Appendix B for election dates.

Ballot Language - Ballot language is specified in O.C.G.A. § 48-8-111. Proposed projects, time period, and maximum dollar amount to be raised for all projects must be listed on the ballot. If road, street and bridge projects are included, a separate maximum dollar amount and time period for these projects must be specified. If debt is to be issued for purposes other than road, street and bridge purposes, the ballot must state the amount of general obligation debt to be issued. The language on the ballot must be specific enough to provide fair notice to voters as to which projects will be funded. If municipalities are involved, their names and their projects must also be identified.

Notice - Advertising requirements to the general public are set forth in O.C.G.A. § 48-8-111(b). The law requires the election superintendent to publish the date and purpose of the referendum once a week for four weeks immediately preceding the election in the county organ.

General Obligation Debt - If general obligation debt is issued in conjunction with the imposition of the tax, then the notice published by the elections superintendent shall also include the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt.

It should be noted that Georgia law requires that, if general obligation bonds are to be raised in conjunction with a SPLOST election, there is an additional requirement that the legal advertisements of a bond election must contain a reference that any brochures,

listings or other advertisements issued by the governing body or a person or group acting on behalf of the governing body shall be deemed a statement of intention concerning the use of funds, and any such statements are binding upon the governing body (O.C.G.A. § 36-82-1(d)). Although not specifically referring to SPLOST elections, prudence would dictate that county officials make sure that any pronouncements or explanations on the uses of SPLOST funds should be made with this requirement for bond elections in mind.

All Projects Must be Approved - The entire package of projects must be approved or rejected. The law does not allow voters to pick and choose from a list of projects. If approved, the tax is imposed on the 1st day of the next calendar quarter beginning more than 80 days after the election. If rejected in the referendum, the next SPLOST election cannot occur until 12 months following the month in which the election was last held.

3. What can be funded through the tax?

Capital outlay projects may be financed through the SPLOST. The tax **may not** be used for operating expenses of a SPLOST project or of any other county or municipality government operations. Capital projects are those which are of a permanent, long-lived nature, as distinguished from current expenditures and ordinary maintenance expenses.

The specific projects which may be funded are listed in O.C.G.A. § 48-8-111 (a) (1):

- roads, streets and bridges, which may also include sidewalks and bicycle paths;
- projects benefiting the residents of the entire county, consisting of: county courthouses; county administrative buildings; civic centers; hospitals; correctional institutions or other detention facilities; county libraries; coliseums;
- local or regional solid waste handling facilities (excluding incinerators) and solid waste recycling processing facilities as defined in O.C.G.A. § 12-8-22;
- county or regional jails;
- projects operated by a joint authority of the county and one or more of the county's municipalities which will be for the use and benefit of the county and municipality residents;
- projects owned or operated or both by the county and/or one or more municipalities having more than 1/2 of the municipal population in the county and which projects are the subject of a contract entered into between the

county and municipalities before the resolution or ordinance calling for the election is adopted;

- cultural facilities; recreation facilities; or historic facilities;
- water and sewer capital projects owned or operated by a county water and sewer district and one or more municipalities, so long as an intergovernmental contract exists between the county and affected municipalities for the project's ownership and operation, and the contract was executed prior to the call for the SPLOST election;
- retirement of previously issued general obligation (G.O.) debt of the county and/or one or more cities, other than road and bridge debt, only if the debt was incurred for projects of a type for which new SPLOST general obligation debt could be issued;
- county public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities;
- county and/or municipality voting equipment;
- county transportation facilities including but not limited to railroads, port and harbor facilities, and mass transportation;
- hospital or hospital facilities owned by a county or hospital authority and operated by the county, hospital authority, or nonprofit 501 (c)(3) organization through contract or lease with the county or hospital authority;
- police cars, fire trucks, ambulances, garbage trucks, and other major equipment;
- any combination of the above.

4. Can equipment be financed through a SPLOST?

In addition to “bricks and mortar” projects, some, but not all, equipment can be financed through SPLOST revenues. Examples include capital equipment related to public safety and airport needs as well as police cars, fire trucks, ambulances, garbage trucks, voting equipment and other major equipment. Generally, this means equipment that has a long life and would be chargeable to a capital account (O.C.G.A. § 48-8-111 (a.1) and Op. Atty. Gen. U85-182).

5. Other than the projects expressly spelled out in the SPLOST law, can other capital projects be financed?

Yes. Use of the intergovernmental agreement provision in the SPLOST law found at O.C.G.A. § 48-8-111 (a)(1)(D) provides counties with the opportunity to consider additional capital projects when municipal projects are included in the call for the referendum (see Questions 13 through 19):

- Since SPLOST is a county tax, the project or package of projects to be financed by SPLOST must provide benefits to the entire county. This can be done directly by financing only projects which have a countywide benefit like a county administrative building, roads and bridges, or a county jail. But the law provides an alternative. By including city facilities in a package of projects, a county can finance needed projects that generally benefit only the unincorporated area of the county. The combination of the city projects with the unincorporated projects meets the “countywide” objective. In other words, by including city project in the referendum, the county has more flexibility to address its capital needs.
- Generally, only the specific types of capital projects specified in the law may be financed through SPLOST. However, by including city projects in the referendum, the range of capital projects that may be financed is broadened. Essentially, any capital project not otherwise listed in the SPLOST law may be financed as part of a proposal which includes municipal projects and are included in an intergovernmental agreement entered into before the call for the referendum.

6. There is mention made of regional jails and regional solid waste handling facilities in the listing above. How can these types of regional facilities be constructed through a SPLOST?

For regional jails, O.C.G.A. § 42-4-90 *et seq.*, the “Regional Jail Authorities Act,” sets forth the parameters for creation and operation of multi-county jail authorities. Basically, the law authorizes creation of a regional jail authority and an intergovernmental agreement among jurisdictions for operation of the authority. Details as to contributions made by each contracting county toward construction of a regional jail, with or without SPLOST funding, would have to be addressed in the contract entered into by the jurisdictions involved.

For regional solid waste authorities, O.C.G.A. § 12-8-50 *et seq.*, the “Regional Solid Waste Management Authorities Act,” Part 2, authorizes creation of multi-jurisdictional entities. Counties and any participating municipalities may also contract with each other for purposes of collection, transportation, and management of solid waste through intergovernmental agreements. Thus, by referencing those projects defined in O.C.G.A. § 12-18-22 in the list of eligible SPLOST projects, SPLOST law allows these funds to be used for capital facilities which are required to further the goals of such regional efforts.

7. What happens if the county proposes an ineligible project and the voters approve it anyway?

Litigation can occur and the courts have invalidated the results of otherwise successful referenda on SPLOST projects. Counties should have their county attorney review proposed projects for legal sufficiency to guard against this possibility.

8. What happens if a county changes its mind on one or more of the projects after the referendum or the project becomes “infeasible”; can these projects not be funded, despite voter approval?

In a 1992 decision, the Georgia Supreme Court ruled that the county governing authority was obliged to use proceeds from the SPLOST tax for the projects specified in the “SPLOST budget and account reports.” The Court further held that the county governing authority “...is bound by the SPLOST budget and account reports to complete all projects listed therein unless circumstances arise which dictate that projects which initially seemed feasible are no longer so. In this regard, the governing authority has discretion to make adjustments in the plans for these projects, but may not abandon the projects altogether.” Dickey v. Storey, 262 Ga. 452 (1992). Caution should be exercised in determining whether your county fits into the facts of the case, as the county in question had already expended large sums of SPLOST funds for a project, when a new board of commissioners decided against proceeding further with the project.

However, if a specific solid waste project was approved and later found to be infeasible, the law permits SPLOST funds to be used for alternative solid waste projects not mentioned in the original referendum.

The Court, in the same ruling, held that the county could not use SPLOST funds for a project that had not been approved by the electorate, noting that under O.C.G.A. § 48-8-121(a), proceeds from the SPLOST “shall be used exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax.” Dickey v. Storey, 262 Ga. 452 (1992).

9. Can the tax be used in conjunction with debt issuance?

Yes, O.C.G.A. § 48-8-111 (d)(2) and (4) allow for use of general obligation debt in conjunction with the tax for all projects other than road street and bridge projects.

If the ballot language includes authorization to utilize SPLOST funds to retire general obligation (G.O.) debt, the county can use the SPLOST receipts to retire the debt as sales tax revenues are received. The county can thus begin construction on their projects or acquisition of capital items through the use of bond or loan funds, having benefit of funds for the projects “up front,” and pay off the obligation as SPLOST monies are received. This technique can allow the county to save on rising construction costs and earn interest on invested SPLOST money until each year’s debt payment is due.

Any G.O. bonds used in conjunction with SPLOST, of course, must be validated in the local superior court. Also note that any “shortfall” of SPLOST revenues to retire the outstanding debt must be made up by general funds of the county in any year in which this occurs.

Note, that there is a special consideration for consolidated governments using SPLOST to retire G.O. debt. O.C.G.A. § 48-8-111.1 provides that a consolidated government can collect the tax for the length of time needed to raise the amount of money required to retire general obligation debt, even if that term exceeds the general limitations on maximum time limits for the tax’s collection which is imposed on other, non-consolidated governments.

10. Can a county’s general fund be used to “advance” SPLOST projects, with the general fund being reimbursed upon receipt of SPLOST monies?

Although there is no legal precedent directly on this point, it is our opinion that so long as strict accounting for SPLOST funds is maintained and the purposes are solely those which were ratified by the electorate, this is proper. GEFA loans serviced by SPLOST receipts have been upheld as proper by the Attorney General.

11. Are there other options available to “advance” SPLOST projects?

Yes, lease-purchase or certificates of participation (COPs) financing, which is not directly addressed in the SPLOST statute but is authorized by other provisions of Georgia law, has developed into a common method of financing SPLOST projects. Lease-purchase obligations are not general obligation debt of the county and the use of lease-purchase financing does not have to be approved in the SPLOST referendum or even contemplated before the referendum.

There are restrictions on the use of lease-purchase financing that may make it unsuitable for some SPLOST projects. Because the projects themselves serve as the collateral in a lease-purchase financing, the project must be essential to the operation of government services and must be a discrete project that could be repossessed if the county does not meet its obligation. For example, renovations of a courthouse by itself would not qualify.

The structure of a lease-purchase financing differs from other types of financing. First, the interest rate on a lease-purchase financing may be higher than general obligation debt because the risk for the lender is greater. Second, lease payments are subject to annual renewal. If the county fails to renew, the lease is terminated and the project being financed becomes the property of the financing institution. Finally, counties must finance 100% of the project being leased. The maximum term of the lease will vary according to the lenders estimated useful life of the equipment or facility being leased. When the lease is paid in full the county will take ownership of the property.

12. Must all projects be constructed or implemented simultaneously or can they be prioritized and constructed in different time frames?

The nature of capital project financing, and the manner in which SPLOST funds are accumulated, month-to-month, dictates that projects may have to be constructed in sequential order. Prioritizing and constructing projects during different time frames presents no legal problem.

As noted in Question 9, 10 and 11 above, counties can use general obligation bonds, general fund monies or lease-purchase financing to “advance fund” projects, in which case all can proceed simultaneously.

13. Can municipalities levy a SPLOST or finance municipal projects through SPLOST revenues?

While municipalities cannot levy their own SPLOST, the law does permit counties pursuant to O.C.G.A. § 48-8-111 (a)(1)(D) to include municipal projects or joint county-municipal projects in the referendum. The law also requires the board of commissioners to notify the mayor or chief elected official in each municipality located within the county 30 days prior to the issuance of the call for the referendum. The notice must be mailed at least 10 days prior to the date of the meeting and must contain the date, time, place, and purpose of the meeting (O.C.G.A. § 48-8-111(a)). The purpose of this meeting is to discuss the proposed SPLOST projects with the municipalities and consider including municipal projects on the referendum along with the county projects. This process provides an opportunity to assure that the SPLOST will address the broad range of community needs required to gather widespread support for the referendum.

Although, the law requires that counties hold a meeting with the municipalities, there is no requirement that counties include any municipal project in the SPLOST. Except for voting equipment, the law does not allow for a municipal project to be included unless the county has entered into an intergovernmental agreement or contract before the call of the election with a municipality or municipalities representing more than ½ of the total municipal population. Approval for any municipal project is exclusively the purview of the board of commissioners who must determine whether the public is best served by including the municipal projects in the referendum.

14. What municipal projects can be included?

The Attorney General has confirmed that the SPLOST statute does not authorize municipal projects generally. It only authorizes those municipal projects specifically referred to in the law or subject to a qualifying intergovernmental contract (Op. Atty. Gen. U91-1).

Certain municipal projects are clearly eligible for SPLOST, including voting equipment, water and sewer projects if owned and operated jointly by the county and municipality through a contract and refunding certain municipal general obligation debt. Any other municipal capital project is authorized only where an intergovernmental contract has been

entered into before the referendum between the county and the municipality or municipalities having more than one-half of the aggregate population of all municipalities in the county.

15. Why would a county choose to share county SPLOST proceeds with a city?

There are several good reasons:

- By including city facilities in a package of projects, the county has more flexibility to address its capital needs. For example, a county can finance needed projects that generally benefit only the unincorporated area of the county if included with municipal projects thereby providing countywide benefits from the SPLOST.
- Generally, only the specific types of capital projects specified in the law may be financed through SPLOST. However, by including city projects in the referendum, the range of capital projects that may be financed is broadened.
- Counties have an interest in keeping their cities healthy and viable. Using county SPLOST revenues to finance city projects may help in this regard by resolving pressing municipal capital needs.
- Including municipal projects in the package encourages a spirit of cooperation among county and city officials.
- Including municipal projects may generate additional support for SPLOST and help the referendum pass.

16. Is it appropriate to simply divide SPLOST revenues among the county and cities by population?

No. SPLOST revenues are to be used for specific identified projects. The Attorney General has ruled that SPLOST revenues are not to be apportioned in the manner provided for by the joint county and municipal sales and use tax (Op. Atty. Gen. U85-24) and that a county can not “act as a mere conduit of tax proceeds to cities for use on projects independent of the purposes identified in the resolution” (Op. Atty. Gen. U90-18).

However, even though a general distribution of SPLOST revenue based on population would not be appropriate, a county could use population as a target for the value of proposed city projects to be included on the ballot.

17. Are there any other considerations a county should take into account when contemplating municipal SPLOST projects?

Yes. As a matter of equity to all residents of the county, commissioners should consider that if city projects are funded that primarily benefit city residents, an inequity could be

created unless projects which primarily benefit the unincorporated residents are also included. In other words, if only countywide projects, like a county courthouse or jail, are on the ballot with city projects, then city residents get two shares of the county SPLOST revenues while unincorporated residents get one share.

18. What should be addressed in an intergovernmental agreement between a county and cities for financing capital projects?

In addition to detailed list of county and municipal projects to be financed, the intergovernmental agreement should include provisions that require cities to do the following: maintain separate funds for the SPLOST revenues, use the funds as provided in the agreement or forfeit the funds, audit the SPLOST account and submit a copy to the county, keep proper records of the expenditure of the funds. The agreement should also provide a procedure for distributing SPLOST funds such as according to a specified schedule or upon being requisitioned, a provision to bar transfer of a county SPLOST-financed project to private use (like selling a SPLOST-financed golf course to a private developer at a profit) or reimbursing the county if it does occur.

19. How should SPLOST funds be distributed to a city for a municipal project approved by the county?

This should be addressed in the intergovernmental agreement between the county and the city or cities entered into before the call for the referendum. Distribution can occur according to a regular schedule or upon being requisitioned as moneys are expended for the municipal project. The requisition procedure is used by many counties to ensure that county SPLOST funds are properly administered and not commingled with general city revenues. Some projects may not have as high a priority as others, and the distribution of the SPLOST revenues as specified in the intergovernmental agreement may reflect the relative importance of the county and municipal projects to the community. Another alternative is to pre-fund the projects through general obligation bonds or certificates of participation. Doing so provides the funds up front for distribution. See Questions 9 and 11 for additional information.

20. Can local schools be built through the tax?

No, local schools are not eligible project uses for the tax. A separate ESPLOST for schools is available for school systems. The school's levy of a 1% ESPLOST does not count against the county's 2% local option sales tax cap.

21. What is the State's role in administering the SPLOST?

The tax is administered by the state in the same manner as the state and regular local option sales tax, with monthly distribution of the tax proceeds made by the Georgia Department of Revenue to participating county governments. Any payment of SPLOST proceeds for municipal projects must be distributed by the county. The state retains one

percent of SPLOST funds collected to cover its administrative costs. The state also retains all interest income earned on the SPLOST proceeds before they are dispersed back to the county government.

22. How do monthly collections of SPLOST compare to monthly collections of the Local Option Sales Tax (LOST)?

Although the two taxes are one percent (1%) of the purchase price and are applied on the same sales base, the monthly receipts may differ. SPLOST receipts may be as much as 10% more or less than LOST, and most of the time SPLOST collections are lower.

Differences occur for the following reasons:

- Unlike SPLOST a portion of the LOST proceeds are sent directly to the municipalities
- Despite local publicity, some vendors may fail to begin collections of the SPLOST when they are supposed to.
- Purchasers are assessed taxes which are valid at the date of purchase even though the vendor may be paid long after that date, and one of the taxes may take effect in the intervening period.

23. Does the State of Georgia need to approve the SPLOST projects before or after the election?

No, the opinion of the county attorney or the county itself may be “relied upon” by the Department of Revenue that the tax has been validly imposed. The Revenue Commissioner may not be held liable for collection of any tax which has not been validly imposed (O.C.G.A. § 48-8-113). Note that the Department does request a copy of the resolution or ordinance calling for the referendum on the SPLOST to be sent to it.

24. Do federal “pre-clearance” requirements apply to a SPLOST referendum?

Yes, the county must ensure that federal voting rights requirements have been met. For details as to requirements, contact the Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave., NW, Washington, D.C. 20530, (800) 253-3931.

25. In case of a “shortfall” of SPLOST funds to pay for projects, what happens?

The projects could be scaled back or the county’s general fund or other funding sources would have to make up the shortfall to complete the projects.

26. What happens if more funds are collected than are needed to pay for the projects?

The Georgia Department of Revenue will shut down the tax at the end of the calendar quarter in which the department determines that the amount approved by the voters will be obtained by the county (O.C.G.A. § 48-8-112). See also Question 33 below.

If excess proceeds are collected, the excess funds shall first be used to reduce the indebtedness of the county. Then, after paying off such indebtedness, if excess funds still remain, they are placed in the general fund of the county for property tax relief (O.C.G.A. § 48-8-121(g)(2)).

27. Can SPLOST collections be deposited in the county's or participating municipalities' general fund?

No, except for excess revenues described in Question 26, strict accounting is required for SPLOST funds. Each government receiving SPLOST moneys must “maintain a record of each and every project for which the proceeds of the tax are used.”

Funds must be separately accounted for. Under no circumstances can these funds be commingled with county or municipality general funds (O.C.G.A. § 48-8-121).

Remember, the primary intent behind SPLOST is to pay for specifically enumerated projects, not to balance the government's books or to pay for other expenses of the governments. When this general principle is remembered, proper caution in handling or expending SPLOST funds will be exercised.

28. What records must be kept on SPLOST projects?

Each annual county or municipal audit must include a schedule for each project, the amount expended in prior years, the amount expended in the current year, and the estimated percentage of completion. The statute requires that records sufficient for these audit purposes be maintained for every project for which the SPLOST is used.

29. Can SPLOST funds be borrowed for other county services or projects and paid back later from the general fund?

No, the SPLOST funds cannot be commingled with any other funds prior to their being expended (O.C.G.A. § 48-8-121(a)(1)).

30. Where should interest earned on SPLOST proceeds be deposited?

The interest earned from SPLOST collections must be treated the same as other revenues from the tax. It must be separately accounted for and annually audited to ensure proper

expenditure. Additionally, it may only be used for purposes specified in the SPLOST ordinance or resolution (Op. Atty. Gen. 2001-3).

When a county has included municipal projects in the SPLOST package the county may send pro-rated interest earnings to the municipalities in the proportion the municipal project bears to total cost of all SPLOST projects when interest reimbursement is provided for in the intergovernmental agreement. Absent such contractual agreement as to interest earnings, however, counties are advised that the tax is first and foremost a county tax, thus interest accrues to the overall list of countywide projects which have been approved by the voters of the county.

31. What planning should take place for a SPLOST program?

Although not a legal requirement, counties and municipalities are encouraged to have a capital improvements plan (CIP) in place, which represents the county's and municipalities' short and long-term capital program goals. Essential elements of a CIP are cost estimates of each of its elements and provisions for citizen input into the CIP's preparation and adoption. Logical candidates for SPLOST projects are those projects listed in the county's and each municipality's CIP.

Getting the involvement of citizens in a CIP process can build the base of community support necessary to pass a SPLOST referendum. Although the ballot itself does not require detailed project descriptions, citizens should have a degree of comfort provided to them by being provided with detailed proposals before they vote on the SPLOST.

32. What involvement can public officials have in promoting the tax's passage by the county's voters?

Note that governmental entities cannot expend public dollars to obtain passage of the tax (O.C.G.A. § 21-5-30.2(b) and (c) and 21-5-3(2)). Counties should consider encouraging formation of a private non-profit organization for this purpose. Chambers of commerce or other business or civic groups can provide the leadership necessary to promote the approval of a SPLOST program and such organization needs to register with the State Ethics Commission and meet that agency's reporting requirements for campaign financing. For details, including further information on permissible campaign activities under Georgia law, contact the State Ethics Commission, 8440 Courthouse Square East, Suite C, Douglasville, Georgia 30134 (770) 920-4385.

Note that local elected officials may express their opinion on the tax and may use county funds to prepare neutral descriptions of the SPLOST proposal and the impact of the SPLOST proposal on the county. However, county or municipal tax dollars may not be spent for advertisements, flyers, mailings, or any other direct promotion in support of passage of the SPLOST. Similarly, counties cannot indirectly do so by contributing county funds to any campaign committee formed to promote passage of the SPLOST (Harrison v. Rainey, 227 Ga. 240 (1971); McKinney v. Brown, 242 Ga. 456 (1978)).

It is certainly not an unreasonable expectation, however, that elected officials exercise leadership in their communities to let the public know why the SPLOST vote is being held and how the projects will enhance the community. The very fact that the commission has voted to let the voters decide whether to tax themselves to construct these facilities would seem to require elected officials to explain why the county commission decided to move forward with the tax in the first place.

Intergovernmental cooperation between the county and its municipalities is critical to ensure that taxpayers' dollars are utilized in the most cost effective manner and municipalities should be part of the process of planning for the SPLOST projects to be voted upon if municipal projects are included in the SPLOST proposal. Besides the obvious need to obtain political support needed to pass a referendum, the dialogue between and among the county and its municipalities enhances sound use of tax dollars to deliver services to local citizens.

33. How does the tax terminate?

The tax automatically terminates on the final day of the maximum period of time specified for imposition of the tax or the end of the calendar quarter during which the Georgia Department of Revenue determines that the tax will raise funds sufficient to raise the amount voted upon by the county's electorate, whichever comes first. Additionally, if general obligation debt is used in conjunction with the SPLOST and bond validation is denied by the superior court having jurisdiction, the tax is likewise terminated (O.C.G.A. § 48-8-112).

34. Can a new SPLOST be voted on while another SPLOST is still in effect?

Yes, by a subsequent call for referendum by the county governing authority under the procedures set forth in O.C.G.A. § 48-8-111 and § 48-8-112. The county should adopt a resolution or ordinance, prior to the ending of the current SPLOST, calling for a referendum on its continuation. Note that all other requirements of SPLOST law must be met.

If there is an expectation that the voters will approve a follow-up SPLOST, counties should make every effort to schedule the vote prior to expiration of the existing SPLOST. This minimizes taxpayer confusion and unnecessary administrative burdens on merchants if the SPLOST temporarily suspended.

The call for referendum may be at any time prior to the expiration of the SPLOST currently in effect. However, the referendum must coincide with the uniform election dates authorized under O.C.G.A. § 21-2-540 and the vote must be not later than that date which would allow passage of 80 days after the election. This is necessary to meet the requirements of O.C.G.A. § 48-8-112, which provides for the tax to take effect or be

continued on the 1st day of the next calendar quarter beginning more than 80 days after the election.

There is an exception made in which emergency conditions cause a failure of the SPLOST continuation-election to occur at the scheduled time. Counties that are victims of acts of nature or other disasters which cause a delay or postponement of the scheduled election can request the Revenue Commissioner to allow continuation of the tax. Such grant of authority is allowed “if administratively feasible.” It is further conditioned on a subsequent election ratifying the continuation of the tax upon the expiration of the tax then in effect. Counties that feel they have such conditions need to contact the Georgia Department of Revenue, Division of Sales Taxation at (404)417-6601.

APPENDIX A

Special Purpose Local Option Sales Tax Implementation [O.C.G.A. § 48-8-111 (a)]

Action:

Commissioners send notice inviting mayors to a meeting to discuss SPLOST projects. Notice must specify time, place and purpose of the meeting.

Meeting is held with city officials to discuss potential SPLOST projects including possible city projects.

County adopts a resolution calling for imposition of the SPLOST and, if the county agrees to include city projects, enters into an intergovernmental agreement with the affected cities specifying city projects and any conditions.

After adopting the resolution and entering into an intergovernmental agreement with the city or cities if city projects are to be included in the SPLOST, commissioners must forward a copy of the resolution to the county election superintendent.

Superintendent issues call for the referendum.¹

Timeline:

Notice must be mailed or delivered to each mayor at least 10 days prior to the meeting.

Meeting must take place at least 30 days prior to the call for the election.

Resolution is adopted after the meeting with the city officials but prior to the call for the election.

After adoption of the resolution.

The call is issued by the superintendent when he or she receives the resolution from the county. The call must be at least 29 days before the date of the special or general election at which the SPLOST question will be presented to the public for ratification.² Note that the date of the call is the date it appears in the newspaper [O.C.G.A. § 21-2-2 (2.1)].

NOTE: *Minimum time for the above process: the notice to the mayors must be delivered at least 69 days prior to the election date. However, that is the bare minimum. In fact, it is likely to take several days more especially if there is not a daily newspaper in which to publish the call. In sum, the date the call is published in the newspaper must be at least 29 days before the election date and the notice to the mayors must be at least 40 days before the issuance of the call. Count back from the quarterly special election date to determine the latest date for giving notice to your mayors about the SPLOST meeting.*

¹ The date and purpose of the election must be published once a week for four weeks immediately preceding the date of the election in the official organ of the county per O.C.G.A. § 48-8-111 (b).

² See O.C.G.A. § 21-2-540 for quarterly special election dates.

APPENDIX B

TITLE 21. ELECTIONS

Chapter 2. Elections And Primaries Generally

Article 14. Special Elections And Primaries Generally; Municipal Terms Of Office

§ 21-2-540. Conduct of special elections generally

(a) Every special election shall be held and conducted in all respects in accordance with the provisions of this chapter relating to general elections; and the provisions of this chapter relating to general elections shall apply thereto insofar as practicable and as not inconsistent with any other provisions of this chapter. All special elections held at the time of a general election, as provided by Code Section 21-2-541, shall be conducted by the poll officers by the use of the same equipment and facilities, so far as practicable, as are used for such general election.

(b) At least 29 days shall intervene between the call of a special primary and the holding of same, and at least 29 days shall intervene between the call of a special election and the holding of same. The period during which candidates may qualify to run in a special primary or a special election shall remain open for a minimum of two and one-half days. Municipal special elections which are to be held in conjunction with a state-wide general primary or state-wide general election shall be called at least 60 days prior to the date of such state-wide general primary or state-wide general election; provided, however, that this requirement shall not apply to special elections held on the same date as such state-wide general primary or state-wide general election but conducted separate and apart from such state-wide general primary or state-wide general election.

(c) (1) Notwithstanding any other provision of law to the contrary, a special election to present a question to the voters or a special primary or special election to fill a vacancy in a county or municipal office shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years any such special election shall only be held on:

- (i) The third Tuesday in March;
- (ii) The third Tuesday in June;
- (iii) The third Tuesday in September; or
- (iv) The Tuesday after the first Monday in November; and

(B) In even-numbered years any such special election shall only be held on:

(i) The third Tuesday in March; provided, however, that in the event that a special election is to be held under this provision in a year in which a presidential preference primary is to be held, then any such special election shall be held on the date of and in conjunction with the presidential preference primary;

- (ii) The date of the general primary;
- (iii) The third Tuesday in September; or
- (iv) The Tuesday after the first Monday in November.

(2) The provisions of this subsection shall not apply to:

(A) Special elections held pursuant to Chapter 4 of this title, the "Recall Act of 1989," to recall a public officer or to fill a vacancy in a public office caused by a recall election;

(B) Special primaries or special elections to fill vacancies in federal or state public offices.

(d) Except as otherwise provided by this chapter, the superintendent of each county or municipality shall publish the call of the special election.

(e) Candidates in special elections shall not be listed on the ballot according to party affiliation unless a candidate has been nominated in a special primary, in which event such a candidate shall have his or her name placed in a column under the name of his or her party. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.